

WIRELESS FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	
FM Table of Allotments,)	MB Docket No. 02-382
FM Broadcast Stations.)	RM-10615
(Bridgeton and Pennsauken, New Jersey))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 18, 2003

Released: June 23, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rulemaking* issued at the request of Cohanzick Broadcasting Corporation, licensee of Station WSNJ-FM and New Jersey Radio Partners, Inc., ("Petitioners"),¹ proposing the substitution of Channel 300A for Channel 299B at Bridgeton, New Jersey, and the reallocation of Channel 300A from Bridgeton to Pennsauken, New Jersey, as the community's first local transmission service, and the modification of the license for Station WSNJ-FM to reflect the changes.² Petitioner filed comments in support of the proposal, reiterating its intention to file the necessary applications to effectuate Station WSNJ-FM's operation at Pennsauken. Opposing comments were filed by the School District of Haverford Township, licensee of Class D Station WHHS, Channel 300D, Havertown, Pennsylvania, West Windsor Plainsboro Regional School District, licensee of Class D Station WWPH, Channel 300D, Princeton, New Jersey, and David Brouda and David C. Weston, former students at Haverford Township. Petitioner filed reply comments responding to the oppositions.

2. Petitioners filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.³ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.⁴

3. The oppositions request that this proposal be denied in the public interest because it will force Station WHHS(FM) and Station WWPH(FM) off the air. David Brouda also notes that two FM translators will be forced to discontinue operation. With respect to Stations WHHS and WWPH, the commenters state that each station is operated by high school students and is a valuable teaching tool. In addition, they emphasize the extent of local programming that each station has provided to its respective

¹ New Jersey Radio Partners, LLC is now the licensee of Station WSNJ-FM the application for assignment of license (File No. BALH-200201002AAN) granted on February 14, 2002.

² This proposal was originally filed as an amended petition in MM Docket No. 02-26. That docket was terminated and this one simultaneously initiated to consider this amended proposal as a new petition for rule making.

³ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

community, and argue that the community has come to depend on their broadcasting of community and local issues. Each station has been in operation for a significant period of time; over fifty years for Station WHHS, and over 25 years, for Station WWPB. All commenters request in the public interest, these stations should remain on the air, and that the instant proposal be denied. They request that the Commission make this determination, despite the fact that the rules grant Class D stations no legal protection from interference from full power stations, and in fact, prohibit such stations from causing interference to full power stations.

4. Petitioners respond that all of the stations that will be required to leave the air are secondary services, and it is not appropriate to consider their loss of service in an allotment proceeding. With respect to the translators, they argue that the Commission has addressed the issue of interference and has determined that such an issue is not ripe for consideration until it is determined that actual interference is caused.⁵ They note that the same rationale should apply to Class D stations because the rules applicable to these stations are based on actual interference, as well. Furthermore, they note that none of these services is entitled to interference protection from full service FM stations.⁶ In their reply comments, Petitioners state that they recognize that the activation of Channel 300A at Pennsauken will force Stations WHHS and WWPB to abandon their frequencies. They state that they are willing to make engineering accommodations to permit these stations to operate. However, they repeat that they have no obligation under the Commission's rules to protect these stations. In fact, they point out that Class D stations and other secondary services such as translators, are not even considered when full power primary service stations seek to change their facilities by application or rulemaking.

5. In further support of the petition, Petitioners state that Channel 300A can be allotted at Pennsauken in accordance with Section 73.207 of the rules, and it will place a 70dBu to the community from the proposed reference point. The allotment will provide the community with its first local aural transmission service. Bridgeton, 1990 U.S. Census population, 18,942 persons, will continue to receive local transmission service from an AM and a NCE FM station.⁷ They also state that the proposal will eliminate short spacings to Stations WGTB(FM) Channel 299B, Gettysburg, Pennsylvania, Station WBYN(FM), Channel 298B, Boyertown, Pennsylvania, Station WFSI(FM) Channel 300B, Annapolis, Maryland, and Station WPUR(FM) Channel 297B1, Atlantic City, Maryland. In addition, they claim that the relocation will eliminate sizeable overlap areas totaling 4,747 square kilometers caused by these short spacings, and bring interference-free service to 2,142,046. Finally, they claim that the relocation of the station to Pennsauken will result in a net increase in population to 1,283,520 persons able to receive a 60 dBu signal from the station, although there will be a decrease in the area served. The loss area will continue to be well served by more than five aural services.

6. We will grant the proposal. If actual interference results when Station WSNJ-FM activates its operation, then Stations WHHS and WWPB must go off the air. We have considered the comments filed and are sympathetic to the concerns that they raise. However, the rules applying to secondary stations are based on actual interference and are very clear that a secondary station must give way if it causes actual interference to a primary station. As noted by Petitioners, the Commission adopted the current standards governing the relationship between primary and secondary FM operations in order to provide certainty and clarity in the process of allotting and modifying primary FM stations. The integrity of the FM Table of Allotments depends on strict adherence to these standards.

7. We find, based on Petitioners' showing, that Pennsauken is an independent community for allotment purposes. We received no comments in response to our request in the *Notice* regarding

⁵ See *Kingston, New York*, 17 FCC Rcd 14326 (2002).

⁶ 47 CFR §§ 74.1203 (translators), 73.512(d) (Class D stations).

⁷ Stations WSNJ-AM and WNJB(FM) will remain in Bridgeton.

Pennsauken's status as a community independent of the Philadelphia Urbanized Area. It is 8.3 kilometers from Philadelphia, and within the Philadelphia Urbanized Area. It has a 2000 U.S. Census population of 35,737 persons. Petitioners provide a showing that the community is an independent community deserving of a first local service preference.⁸ This showing is based on the factors enumerated in *Faye and Richard Tuck*.⁹

8. In response to our request in the *Notice* that in their original proposal, Petitioners pledge to file the necessary applications to effectuate their request or to construct the facilities if their applications are granted.

9. We also believe that this proposal will fulfill the public interest because it will provide a first local aural service to a community of over 16,000 persons, which fulfills Priority (3) of the Commission's FM Allotment Priorities. It also eliminates four short spacings, and will give an additional aural service to over one million persons. An engineering analysis shows that Channel 300A can be allotted at Pennsauken at a site 6.1 kilometers (3.8 miles) northeast of the community.¹⁰

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 7, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community

Bridgeton, New Jersey
Pennsauken, New Jersey

Channel

300A

11. Additionally, IT IS ORDERED That the Secretary of the Commission shall send a copy of such comments to the Petitioners' counsel, RETURN RECEIPT REQUESTED as follows:

Marnie K. Sarver, Esq.
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, DC 20006
(Counsel to Cohanzick Broadcasting Corp.)

Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008
(Counsel to New Jersey Radio Partners, LLC)

⁸ Petitioners show that as of 1990, 22% of residents work in the community, and in the intervening years, more businesses have developed in the community to provide employment opportunities for residents. (Factor 1). The community has its own local daily paper, a monthly publication, and two websites. (Factor 2). The town had its own separate history dating back to 1633, and its own identity as an incorporated community. (Factor 3). Pennsauken has its own local government and elected officials, police, fire departments, and many municipal offices offering various services. (Factor 4). The town has its own zip code and separate government listings in the local county telephone book. (Factor 5). The town has its own commercial establishments (approximately 1,300 in number) and health facilities, as well as churches, parks and civic organizations. (Factor 6). Pennsauken is a distinct advertising market from Philadelphia because it has the other media in which to advertise. (Factor 7). The township has its own school system, library, police and fire service, independent of any larger entity. (Factor 8).

⁹ 3 FCC Rcd 5374 (1988).

¹⁰ Channel 300A can be allotted at Pennsauken at coordinates 40-00-12 NL and 75-01-19 WL.

12. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cohanzick Broadcasting Corporation, for Station WSNJ-FM Inc. Channel 299B, Bridgeton, New Jersey, IS MODIFIED to specify operation on Channel 300A at Pennsauken, New Jersey, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Cohanzick Broadcasting Corporation, licensee of Station WSNJ-FM is required to submit rule making fees in addition to the fees required for the applications to effect their respective changes of community.

14. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau